

Respondent contends claimant did not provide notice of an accidental injury pursuant to K.S.A. 44-520 which requires notice of the accident stating the time and place and particulars be given to the employer within 10 days after the date of accident.

Respondent's business office manager, Ada Hill, acknowledged having a conversation with claimant on February 13, 1997, at which time claimant advised Ms. Hill that she was filing a workers compensation claim.

In computing 10 days from January 31, 1997, the Appeals Board utilizes the method set forth by the Court of Appeals in McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996). The Court in McIntyre held that certain date computations in workers compensation litigation are governed by K.S.A. 60-206(a). The computation excludes the first day when considering the time within which an act is to be done, includes the last day, and excludes any intervening weekends or holidays. Claimant's injury occurred on Friday, January 31, 1997, and claimant provided notice on Friday, February 13, 1997. A computation of the applicable days between those dates, excluding weekends and holidays, finds February 13, 1997, to be within ten days from claimant's alleged date of accident. Therefore, notice on February 13, 1997, of a January 31, 1997, accident would be within the statutory time frame set forth in K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated May 14, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Stephen P. Doherty, Kansas City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director